

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	
City of New Orleans	§	ADMINISTRATIVE ORDER
New Orleans, Louisiana	§	
	§	U.S. EPA DOCKET NO.
REGARDING THE	§	CERCLA 6-10-99
	§	
Agriculture Street Landfill	§	
Site	§	
New Orleans, Orleans Parish,	§	
Louisiana	§	

UNILATERAL ADMINISTRATIVE ORDER FOR ACCESS

I. JURISDICTION

1. This Administrative Order ("Order") is issued to the City of New Orleans ("Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. § 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), 42 U.S.C. § 9604(e)(5).
2. Authority to issue orders pursuant to Section 104 of CERCLA was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923. This authority was further delegated to EPA Regional Administrators on May 11, 1994 by EPA Delegation No. 14-6, and redelegated to the Director of the Superfund Division by Regional Delegation

No. 6-14-6 on August 4, 1995.

3. This Order directs Respondent to comply with EPA's request for access to Respondent's property located on Operable Unit No. 1 ("OU1" or "undeveloped property") of the Agriculture Street Landfill Superfund Site ("Site"). This Order requires Respondent to allow EPA to enter property owned by Respondent and described in Attachment A of this Order, in order to effectuate an environmental response action pursuant to CERCLA.
4. The subject environmental response action is a non-time-critical removal action ("removal action") which is necessary to abate a release or substantial threat of release of hazardous substances to the environment. EPA authorized the removal action, more completely described in Paragraph 20 below, in an Action Memorandum signed on Sept. 2, 1997. The removal action is being conducted pursuant to EPA authority under CERCLA Section 104(a), 42 U.S.C. §9604(a).

II. FINDINGS OF FACT

Based upon information available on the date of issuance of this Order, the Director of the Superfund Division, United States Environmental Protection Agency, Region 6, makes the following Findings of Fact:

5. The Agriculture Street Landfill Superfund Site is the location of a former landfill which was operated by

- Respondent from approximately 1909 through the mid-1960s. The Site covers approximately 95 acres. The landfill received, inter alia, household trash, construction and hurricane debris, and ash from municipal waste incinerators.
6. The Site is located in Orleans Parish approximately 2.5 to 3 miles north-northeast of the central business district of New Orleans. The Site is bound on the north by Higgins Boulevard, and on the south and west by the Southern Railroad rights of way. The eastern site boundary extends from the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Boulevard between Press and Montegut streets. The site is partially developed.
 7. Currently, the Site is divided into two usage areas. Approximately half of the old landfill area is occupied by private, single-family residences, the Housing Authority of New Orleans (HANO) Townhouse development, the Shirley Jefferson Community Center, a small commercial complex, the Gordon Plaza Apartments, Magrauer Playground, and the Moton Elementary School. The remaining portion is undeveloped and, prior to commencement of the response action in October, 1998, was heavily overgrown with vegetation and trees.
 8. Respondent owns property located within the undeveloped property. A description of the specific property under the ownership of Respondent as well as the supporting deed and title records are provided in Attachment A.

9. Individual tracts of land within the undeveloped property are owned by approximately six different landowners. Except for Respondent and one other landowner, all undeveloped property owners have granted access to EPA to conduct the removal action on their property. Access to this property by the general public is now limited by a fence.
10. EPA divided the Site into five operable units for purposes of investigation and response action. As noted above, Operable Unit 1 is the undeveloped property. Operable Unit 2 includes the residential developments: Gordon Plaza Apartments, Press Park Townhomes, and the Gordon Plaza Subdivision. Operable Unit 3 is the Shirley Jefferson Community Center and associated playground area. Operable Unit 4 is the Moton Elementary School, including the Magrauer Playground and recreation center. Operable Unit 5 is the groundwater.
11. EPA completed a Remedial/Removal Integrated Investigation ("RR/II") in March, 1995. The RR/II revealed a number of contaminants in surface and subsurface soil.
12. In the Human Health Risk Assessment (Appendix S to the RRII Report), lead, arsenic and polynuclear aromatic hydrocarbons (PAHs) were identified as contaminants of potential concern (COPCs) in surface and subsurface soil.
13. Lead, arsenic, and PAHs are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4.

14. Site characterization data compiled in the RR/II Report identified the potential for direct and indirect contact, ingestion, and inhalation of soil and waste contaminated with COPCs by human and ecological receptors at concentrations which could pose unacceptable risks.
15. In November, 1995, EPA completed an Engineering Evaluation and Cost Analysis ("EE/CA") for the Site. The EE/CA was made available for comment on April 17, 1996.
16. On February 28, 1997, a Proposed Plan of Action was released for public comment. Comments were accepted from March 5, 1997 through May 12, 1997.
17. Review of public comments revealed objections to leaving the undeveloped property fenced, without further response action. EPA provided an additional opportunity to comment on alternatives for OU1 between July 7 and August 5, 1997.
18. In September, 1997, EPA issued an Action Memorandum authorizing a non-time-critical removal action for Operable Units 1, 2, and 3.
19. In September, 1997, EPA issued a Record of Decision selecting no further action for Moton School (OU4) and the Groundwater Operable Unit (OU5). Investigations conducted by EPA subsequent to placing the Site on the National Priorities List (NPL) indicate that no additional response actions are required to ensure protection of human health and the environment at Operable Units 4 and 5.
20. Components of the removal action for OU1 are to clear the

- property of vegetation, place a geotextile filter fabric on the subgrade, cap it with 12 inches of clean soil, grade and compact the clean fill, and re-vegetate the surface.
21. Components of the removal action for Operable Units 2 and 3, the residential area and Community Center, are to excavate the top 24 inches of existing soil/waste material and transport it off-site for disposal. Permeable geotextile filter fabric will be placed on the subgrade, covered with clean fill, and relandscaped. Surface features will be replaced or returned as nearly as possible to "as was" condition.
 22. Field work on all operable units is expected to conclude within 12-18 months from its inception.
 23. In October, 1998, EPA initiated the non-time-critical removal action at the Gordon Plaza Apartments and on portions of the undeveloped property for which access had been granted by the property owner.
 24. The removal action will abate a release or a potential release of the identified hazardous substances into the environment. Such a release could adversely impact human health through inhalation, ingestion, or dermal contact.
 25. EPA requires access to the Respondent's property to conduct a removal action under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), on the Site as described in the 1997 Action Memorandum.
 26. Respondent is a municipality located in the state of

Louisiana.

27. In conformity with agency policy, EPA sought to obtain voluntary access to Respondent's property. By letter dated November 12, 1997, EPA notified Respondent that access to the property was needed in order to conduct a CERCLA non-time-critical removal action. The letter provided Respondent with a standard EPA access agreement relating to the property owned by the Respondent and requested that the Respondent sign and return the agreement. Respondent did not sign the agreement. Correspondence related to site access is provided at Attachment B.
28. On Oct. 19, 1998, at the beginning of field work on this response action EPA technical and legal staff met with representatives of the City and the Housing Authority of New Orleans to discuss the governmental entities' permission to conduct the response action on property owned by them and found within the Site boundaries, among other issues.
29. On November 19, 1998, Mr. Lon Biasco, On-Scene Coordinator for EPA, discussed the matter of access by teleconference with Jerald L. White, Mayor's Office of Environmental Affairs. A second copy of the standard EPA access agreement for City property on the Site was faxed to Mr. White on that date.
30. By letter of December 23, 1998, EPA again wrote to Respondent soliciting access. A copy of the December 23 letter and an access agreement with a complete property

description attached was sent to city officials by Federal Express on January 4, 1999.

31. By letter dated January 7, 1999, Respondent unequivocally denied access to EPA to conduct the response action.

III. CONCLUSIONS OF LAW

Based upon information available on the date of issuance of this Order, the Director of the Superfund Division of EPA Region 6 makes the following Conclusions of Law:

32. Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), provides unconditional authority for EPA, its officers, employees, agents and representatives, including designated contractors and state personnel, to enter property at all reasonable times to determine the need for response, or choosing or taking response actions at a site, upon a reasonable belief that there is a release or threat of release of a hazardous substance at the facility.
33. The Agriculture Street Landfill Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
34. "Hazardous Substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and listed in Paragraph 13 above, have been found in surface and subsurface soil samples at the Site.
35. The presence of the hazardous substances identified in Paragraph 13 in the surface and subsurface soils provides

EPA with a reasonable basis to believe that a "release", as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threat of release of hazardous substances to the environment may occur at the Site.

36. Access to the property under the ownership or control of Respondent is for the purpose of performing a removal action as defined in Sections 101(23) and 104(a) CERCLA, 42 U.S.C. §§ 9601(23) and 9604(a). Access is needed for the purpose of "taking" or "effectuating" a response action within the meaning of CERCLA §§ 104(e)(1) and 104(e)(3)(D).
37. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Respondent grant EPA access, pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e), to the area defined in Attachment A, below, for the purpose of conducting the removal action described in the September 2, 1997 Action Memorandum for the Agriculture Street Landfill Site.

38. The activities to be undertaken at this portion of the Site during the Removal Action include, but are not limited to:

Surveying and documenting, by photographs and/or videotape, the condition of the Property (including the inside of any structure on the Property) both before

and after removal work being done on the Property;

Staging of equipment and materials for construction of the response action to the entire Site;

Use and temporary storage of heavy equipment (e.g., bulldozers, backhoes, cranes, etc.) on the property for the duration of the entire Project and for use on the entire Site;

Temporary installation of Site support facilities, including field offices, utility poles and lines, storage sheds, access roads, staging and loading areas, and other facilities as necessary;

implementation of rodent control measures;

Removal of brush, trees, vegetation, trash, and debris as deemed necessary and/or expedient, in the sole discretion of the Government, for remediation to the Property and as required for aid and support to the entire Project and Site restoration;

Clearing, grubbing, grading, trenching, and re-contouring the Property to facilitate drainage, storm water management, and erosion control;

Excavation, as necessary, and consolidation of contaminated soil, including the temporary storage of excavated contaminated soil from the entire Site, which contaminated soil will be removed prior to termination of the response action;

Stockpiling and storing clean soil for capping and

backfill for the entire Site;

Placement of geotextile membrane over the graded area;

Placement of clean backfill over geotextile membrane;

Grading and seeding of cleared area; replanting small trees;

Installation of air monitoring equipment and other safety features during construction and post-construction activities;

Patrolling, policing, and fencing the Property, in the Government's sole discretion, to prevent unauthorized access to the Property and to protect Government equipment;

Removal of all temporary facilities and materials from the Property at the conclusion of the response action to the Site;

Such other actions as the Government and/or the EPA On-Scene Coordinator determines necessary to protect human health or welfare or the environment in connection with the subject removal action.

39. EPA and its response action contractors shall be granted access for the time necessary to complete the non-time-critical removal action set forth in the Sept. 2, 1997 Action Memorandum, together with any additional work EPA determines to be necessary to abate a release or threat of release of a hazardous substance at the Site.

40. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to Section 104(e)(3) of CERCLA, 42 U.S.C. §9604(e)(3) and 40 C.F.R. §300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Site pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.
41. Respondent shall indicate whether it intends to comply with this Order in writing on or before March 8, 1999. Notice of Intent to Comply shall be directed to Ms. Ursula Lennox, (6SF-LP), U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Failure to give notice shall be construed to constitute non-compliance.
42. This Administrative Order shall be binding on all employees, agents, successors and assigns of Respondent. In the event of any conveyance by Respondents of an ownership or control interest in the property which is the subject of this Order, Respondent shall convey the interest so as to ensure continued access by EPA or its representatives for the purposes of carrying out all activities pursuant to this Order. Respondent shall notify EPA in writing at least thirty (30) days before any conveyance of an interest in the property which is the subject of this Order, and shall

notify the other parties involved in the conveyance of the provisions of this Order prior to the transfer.

V. RESERVATION OF RIGHTS

43. Nothing herein limits or otherwise affects any right of the United States to gain entry to property under the ownership or control of any person pursuant to applicable laws, regulations or permits.
44. Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, state, firm, partnership, or corporation for any liability it may have to the United States, or any other person, state, firm, partnership, corporation or association arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, solid wastes, pollutants, or contaminants found at, taken to, or taken from the site.
45. This Order does not constitute any decision on pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VI. LIABILITY OF THE EPA

46. Nothing herein is intended to be an assumption by EPA of liability for any claims or causes of action arising from, or on account of, Respondent's acts or omissions or acts or omissions of those under Respondent's

control arising in connection with the carrying out of activities pursuant to this Order.

VII. ADMINISTRATIVE RECORD

47. EPA has established an Administrative Record which forms the basis for the issuance of this Order. It is available for review by appointment on weekdays during regular business hours at the following information repositories for the Site: 1) USEPA Community Outreach Office, 3221 Press Street, New Orleans, LA, 70126 (504) 944-6445 and 2) USEPA Region 6, 1445 Ross Ave., 7th Floor, Dallas, Texas 75202 (214) 665-6548.

VIII. EFFECTIVE DATE - OPPORTUNITY TO CONFER

48. Respondent may consult with EPA regarding the terms of this Order on or before March 5, 1999. Respondent may appear in person and/or by attorney or other representatives for the purpose of presenting any objections, defenses or contentions which the Respondent may have regarding this Order. If Respondent desires such a consultation, please contact Pamela J. Travis, Senior Attorney, at (214) 665-8056. Respondent may make an oral request for a conference. Any such consultation between Respondent and EPA does not affect any of the times set forth for compliance in this Order.
49. This Order is effective upon receipt.

VIII. PENALTIES FOR NONCOMPLIANCE

50. Respondent is hereby advised that any action taken by Respondent to deny access to EPA for the purpose of conducting the Removal Action, or any attempt to interfere with the actions described in Paragraph 38 of Section IV of this Order, shall be deemed a violation of this Order and subject to the penalties of \$27,500 per day per violation established at Section 104 (e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

Myron O. Knudson, Director
Superfund Division (6SF)
Region 6
United States Environmental Protection Agency

Date

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6SF BUZZELL	6RC STARFIELD			